IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 26.02.2007

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

S.A. No.407 of 1996
and
CMP. No.4148 of 1996

Souther Ammal .... Appellant

Vs.

Jagadambal .... Respondent

This Second Appeal has been filed against the Judgment and decree, dated 26.09.1995, made in A.S.No.35 of 1995, on the file of the District Court, Tiruvannamalai Sambuvarayar District, confirming the judgment and decree, dated 23.12.1994, made in O.S.No.98 of 1988, on the file of the Sub-ordinate Court, Arni.

For appellant : M/s.Pushpa Sathyanarayanan

For respondent : Mr.P.Seshadri

J U D G M E N T

This Second Appeal has been filed against the Judgment and decree, dated 26.09.1995, made in A.S.No.35 of 1995, on the file of the District Court, Tiruvannamalai Sambuvarayar District, confirming the judgment and decree, dated 23.12.1994, made in O.S.No.98 of 1988, on the file of the Sub ordinate Court, Arni.

2. Heard the learned counsel appearing for the appellant as well as for the respondent.

3. The plaintiff in the suit O.S.No.98 of 1988 is the appellant in the present second appeal. The plaintiff had filed the suit for declaration of title with regard to the suit property and for permanent injunction restraining the defendant and her men from in any way interfering with the plaintiff's enjoyment of the suit property. The case of the plaintiff is as follows:

The suit properties along with certain other properties had been settled in favour of the plaintiff's mother Dhanalakshmi Ammal by way of a settlement deed, dated 24.12.1951. The settlement deed had been executed by the brother of the plaintiff's mother. Since the plaintiff had taken care of her mother before her death, plaintiff's mother Dhanalakshmi Ammal had wished that the properties

enjoyed by her as obtained under the settlement deed, along with the other properties, be allotted to the plaintiff. Since the plaintiff was a minor her father had taken possession of the suit properties and was taking care of them on behalf of the plaintiff. On attaining majority, the plaintiff had taken possession of the properties and she was enjoying the same for more than 12 years. Thereafter, she was also paying the land taxes for the said properties. Thus, she had also perfected her title by way of adverse possession. However, the defendant had started interfering with the plaintiff's possession and enjoyment of the suit properties as though she had a right in the said properties. The defendant was also threatening to encroach on to the properties. Since the defendant was acting in a manner contrary to law and equity, the plaintiff had filed the suit for declaration and for an order of permanent injunction against the defendant and her men from interfering with the peaceful possession and enjoyment of the suit scheduled properties.

4. The case of the defendant is that the property belonging to the plaintiff's father's brother-in-law was settled in favour of the mother of the defendant by way of a settlement deed. The properties were in the enjoyment of the father of the defendant. It was further stated by the defendant that the father of both the plaintiff and the defendant had settled it in favour of the defendant by way of a settlement, on 16.01.1958. Since then, the properties have been in the enjoyment and possession of the defendant. It is also the case of the defendant that by a registered Will, dated 20.02.1956, the suit properties were written in favour of the defendant. There was no settlement in favour of the plaintiff as claimed and therefore, no right had accrued to the plaintiff. The plaintiff cannot claim adverse possession. The claim of the plaintiff with regard to the enjoyment of the well by dumping of garbage was false. The plaintiff had only one third of the right in the well. The defendant was taking care of the property through her niece and the taxes were also being paid by the defendant. It is also false on the part of the plaintiff to state that the defendant was trying to forcibly enter into the suit properties, since it is only the defendant who is in possession and enjoyment of the suit properties. Therefore, the prayer for the injunction cannot be sustained and the suit ought to be dismissed with costs.

5.Based on the rival contentions of the parties concerned, the trial court had formulated the following issues:

" 1. Is it true that the defendant is in possession and enjoyment of the suit properties by way of the Will made by her father, dated 20.02.1956, and settlement, dated 16.01.1958?

2) Is it true that the defendant had forcibly entered into the suit properties?

3)Can the prayer of the plaintiff for injunction be sustained?

4) Are there any grounds for maintaining the suit?

5) To What reliefs the plaintiff is entitled to?"

Additional issues had been framed by the trial court on 22.12.1994, which are as follows:

"1) Whether the plaintiff is in enjoyment of the suit property based on the right accrued to her by the oral settlement made by the plaintiff's mother Dhanalakshmi Ammal?

2) Is it true that the title of the suit properties is vested in the plaintiff by way of adverse possession?"

The trial court had come to the conclusion that the plaintiff could not prove the exclusive title in the

suit properties and had, therefore, dismissed the suit. Therefore, the plaintiff had filed an appeal before the District Court, Tiruvannamalai Sambuvarayar District, in A.S.No.35 of 1995. The Lower Appellate Court had dismissed the appeal A.S.No.35 of 1995 by a judgment and decree, dated 26.09.1995, confirming the judgment and decree of the trial court, dated 23.12.1994, made in O.S.No.98 of 1988. Hence, the present second appeal.

6.At this stage of the hearing of the Second Appeal, the learned counsel appearing for the appellant as well as for the respondent has pointed out that the parties are willing to accept the decision of this Court to give a quietus to the matter. It is stated that the dispute pertains to a property belonging to three sisters consisting of 3 Door Numbers, 266, 267 and 268. The total measurement of the property is said to be 35' x 33 1/2'. The claim of the appellant is that she is the owner of Door No.266 which is 33 1/2' x 35'. It is submitted by the learned counsel appearing for the defendant that the property belonging to the appellant, which is Door No.266, measures only 33 1/2' x 12'. During the hearing of the case, it was submitted by the learned counsel appearing for the appellant that the first Appellate Court, instead of dismissing the suit claim in its entirety, ought to have allowed atleast what has been conceded by the respondent herein. In such circumstances, it is ordered that the decree passed by the first Appellate Court would stand modified to the extent that the plaintiff who is said to be the owner of Door No.266, will have the enjoyment of the property measuring 33 1/2' x 12' in the southern portion of the entire property.

Accordingly, the second appeal stands allowed to the extent mentioned above. No Costs. Consequently, the connected C.M.P. is closed.

ssm

[PRV/10574]